



**IT IS ORDERED as set forth below:**

**Date: July 16, 2008**

Paul W. Bonapfel  
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A08-62103-PWB
	:	
JOHN G. SIDERIS,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
	:	
NEW EQUIPMENT LEASING, INC.,	:	
	:	
Plaintiff	:	
	:	
v.	:	ADVERSARY PROCEEDING
	:	NO. 08-6322
JOHN SIDERIS,	:	
	:	
Defendant.	:	

**ORDER GRANTING MOTION TO DISMISS**

The Chapter 13 Debtor seeks dismissal of this proceeding on the basis that the Plaintiff's § 523(a)(6) dischargeability claim fails to state a claim upon which relief may be granted. For the reasons stated herein, the Debtor's motion is granted.

The Plaintiff contends that it entered into an agreement with East Lake Diner, LLC for

the lease of restaurant equipment and that in conjunction with the execution of the lease, the Debtor and David Cousineau (a debtor in chapter 13 case 08-62089-MGD) executed a Guarantee of the lease obligations. The Plaintiff contends that East Lake Diner and the Debtor defaulted on their obligations and that they have failed to turn over equipment to the Plaintiff despite an obligation to do so. The Plaintiff contends that the failure to turn over the equipment constitutes a conversion of the Plaintiff's property and that its debt is nondischargeable pursuant to § 523(a)(6).

The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") narrowed the scope of a chapter 13 discharge by amending §1328(a)(2) to except from a chapter 13 discharge debts of the kind specified in section §§ 507(a)(8)(C) and 523(a)(1)(B), (1)(C),(a)(2),(a)(3), and (a)(4). Excluded from this list, however, is a debt of the kind specified in § 523(a)(6). Thus, while a debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" is excepted from a chapter 7 discharge, it remains dischargeable in chapter 13. As a result, the Plaintiff's § 523(a)(6) claim is not a basis for relief in this chapter 13 case.

The Court further observes that although the BAPCPA amendments created a separate exception to discharge in § 1328(a)(4) that is similar to § 523(a)(6), this exception is inapplicable here. Section 1328(a)(4) excepts from a chapter 13 discharge a debt "for restitution or damages awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused *personal injury* to an individual or the death of an individual." The alleged conversion of restaurant equipment does satisfy the element of personal injury required by § 1328(a)(4).

Based on the foregoing, the Court concludes that the Plaintiff's complaint fails to state a claim upon which relief may be granted. It is

ORDERED that the Debtor's motion to dismiss is granted.

End of Order

Distribution List

Jack C. Basham, Jr.  
Parker, Hudson, Rainer & Dobbs LLP  
1500 Marquis Two Tower  
285 Peachtree Center Avenue N.E.  
Atlanta, GA 30303

Robert D Welford  
Miller Johnson  
250 Monroe Ave, NW, Ste. 800  
PO Box 306  
Grand Rapids, MI 49501-0306

Leon S. Jones  
Jones & Walden, LLC  
21 Eighth Street, NE  
Atlanta, GA 30309